

**GOA STATE INFORMATION COMMISSION**  
**Kamat Tower, Seventh Floor, Patto Panaji-Goa**

**CORAM: Smt. Pratima K. Vernekar,**  
**State Information Commissioner.**

**Penalty. 27/2016**

**In**

**Appeal No. 100/SIC/2014**

Miss Madonna E. Almeida,  
H.No. 257/1, Bagdem,  
3 RD ward Colva,  
Salcete Goa.  
Contact.No. 9970369321

..... Appellant

**V/s.**

1. The Public Information Officer (PIO),  
Sub Divisional Police Officer,  
Margao-Goa

2. Superintendent of Police(South),  
First Appellate Authority (FAA),  
Salcete, Margao Goa.

..... Respondents

**Decided on: 30/03/2017**

**ORDER**

1. While disposing the above appeal, by an order dated 19/08/2016, this Commission directed Respondent PIO, Sub-Divisional Police Officer, Margao-Goa to furnish the information at point number (a) and point number (c) free of cost to the Appellant, sought as per her application dated 09/07/2014. In the same order this commission also issued notice under section 20(1) and 20(2) of the Right To Information Act 2005, seeking reply from PIO to showcause as to why the penalty and compensation as prayed for, by the Appellant should not be granted.
2. In pursuant to the showcause notice Advocate Kishore Bhagat appeared on behalf of Respondent PIO. The

present PIO Shri D. Govekar was also present alongwith then PIO Shri Mohan Naik.

3. Compliance report was filed by present PIO Shri Dinraj Govekar on 27/08/2016. A written reply was also filed in the registry on 12/10/2016 by then PIO Shri Mohan S. Naik and also on 19/01/2017. Written arguments were also filed by the Appellant on 7/12/2016 and on 23/02/2017.
4. The Appellant have contended that the Respondent were duty bound to provide information on 22/08/2014 since the charge-sheet was filed on 7/08/2014 and as such she contended that the information was malafidely withheld by Respondent PIO.
5. The Respondent No. 1 PIO vide his reply have submitted that the reply was given by him based on the information furnished to him by APIO, Police Inspector, Colva Police Station. It is contended that the note were sent to the APIO, Colva Police Station on 10/07/2014, and Colva Police Station vide letter dated 21/07/2014 furnished the information there by stating that the case is under investigation. And based on the said reply of APIO, Police Inspector , Colva Police Station Appellant was requested to collect information vide letter dated 23/07/2014. The Respondent PIO have also relied upon letter dated 21/07/2014 (exhibit B) and their letter dated 23/07/2014 addressed to the appellant and the information furnished to the Appellant which are at Annexure (C) and (D). Respondent No. 1, PIO has further submitted that there was typographical error in the reply filed by the PIO in the 2<sup>nd</sup> appeal in which date of charge-sheet was wrongly mentioned as 08/07/2014 instead of correct date as 7/08/2014 and the said reply was filed based on the information furnished to him by APIO, Colva Police Station vide their letter dated 13/02/2016. He has also

relied upon said letter which is annexure (L). Respondent, PIO have further relied upon the copy of the charge-sheet and certified copies of the extract of outward Register which are annexure (M) and (N) in support of his case. It is his further contention that on the date of reply the investigation was under the process and thus the information could not be furnished to the Appellant.

It is further contended that since the Appellant has challenged their reply dated 23/07/2014 before the FAA, therefore the PIO had to plead his case based on the earlier records and proceedings and put up his defence within the 4 corners of the said proceedings. In other words the Respondent have contended that the PIO was bound to put his defense in accordance to the decision taken by the PIO while giving the reply to the appellant under section 7(1) of RTI Act, as such he should not be held guilty for the same. It is further contention of the Respondent that the first appeal was preferred by the Appellant on 31/07/2014 and at that time also no charge-sheet was filed.

6. In the nutshell he has categorically disputed that wrong information was furnished by them. In short it is the case of Respondent No. 1 PIO that he has furnished correct information to appellant without any delay and as such there was no malafides on their part.
7. I have scrutinize record available in the file, also taken into consideration the submission made by both the parties.
8. Record shows that the application was made by the Appellant on 09/07/2014 the said was responded on 23/07/2014. Annexure (M) i.e. certified copies of the Charge-sheet bearing No. 75/2014 shows that it was outwarded on 7/8/14, vide No. 6459 to be filed before

JMFC as such when the reply was given to application under section 6(1), the said crime No. 150/13 was under investigation and as such no fault could be found in the reply of the Respondent dated 23/07/2014.

9. The records shows that the first appeal was filed on 31/07/2014. Which was heard on 22/08/2014 and finally disposed on 01/09/2014 by the Respondent No. 2. Reply filed by the Respondent PIO before the first appellate authority is based on the information furnished to him by the APIO, Colva Police Station on 12/08/2014. Copy of the said letter which is at annexure (G) is relied upon by the PIO in support of his above contention. In brief the record shows that the reply given by the Respondent PIO to the Appellant on 23/07/2014 and reply filed by the Respondent No. 1 PIO before Respondent No. 2 are based on the information which are provided to him by APIO, Police Inspector of Colva Police Station.
10. Respondent No. 1 PIO was acting in consolance with the provision of RTI Act and since information was not available with him, he had sought the assistance of the APIO under section 5(4). Apparently the record shows that the said information was available with Police Inspector of Colva Police Station. And as such it was duty of Office-In-Charge of Colva Police Station to provide correct and complete information to the PIO. The record shows that on receipt of the notice of the FAA the letter was made by Respondent No. 1 PIO on 2/08/2014 which was replied by Police Inspector of Colva Police Station on 12/08/2014 interalia submitting that the information sought by the Appellant was already submitted to their office of Respondent PIO vide letter dated 21/07/2014.
11. Police Inspector of Colva Police Station appears to have been given reply dated 12/08/2014 in very casual manner and without verifying the actual facts. If correct

and factual information was placed before FAA, the FAA would have decided the issue differently. The records reveals the charge-sheet was filed even before matter was heard by the FAA unfortunately there is no penal provision as against the APIO. The PIO cannot made scape goat for no fault of his. In the present case, it appears that PIO had genuinely and bonafidely entertain the belief and was of the view that the information sought by the queries cannot be provided to him for the reasons mentioned by APIO. PIO had responded to the application of appellant based on the information provided to him by his subordinate who was holding the said information.

12. Hon'ble High Court at Bombay at Goa Bench at Panaji in the case of ***Shri A.A. Parulekar V/s Goa State Information Commission and others (Writ Petition No. 205/2007 )*** has observed:

***"11. The order of penalty for failure is akin to action under criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate"***

13. *Yet in another case reported in Delhi High /court in case of Registrar of Companies and Others V/s Dharmendra Kumar Garg and Anothers in W.P. (c) 11271/2009 in judgment delivered on 1/06/2012 has held that:-*

*"The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e., where the PIO, without reasonable cause refuses to receive the application, or provide the information, or **knowingly gives incorrect**, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. If the CIC starts imposing penalty on the PIOs in every other case, without any justification, it would instill a sense of constant apprehension in those functioning as*

*PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.”*

14. In view of above I donot find any cogent and convincing evidence as against Respondent No. 1 PIO to hold that wrong information was provided by him was either intentional or deliberate. I am satisfied with the justification given by the Respondent PIO. And as such I find that proceeding for imposition of penalty as initiated by this Commission cannot be continued to proceed. Show cause notice dated 30/08/2016 as issued to Respondent, PIO stands withdrawn.

Notify the parties.

Authenticated copies of the Order be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided against this order under the Right to Information Act 2005.

Proceedings closed.

Pronounced in the open court.

**Sd/-**

**(Pratima K. Vernekar)**

**State Information Commissioner  
Goa State Information Commission,  
Panaji-Goa**

Fn/-